

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GEORGE JOHNSON,

11 Plaintiff,

12 v.

13 DONALD P. WANG, et al.,

14 Defendants.

CASE NO. C16-1738JLR

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

15 **I. INTRODUCTION**

16 This matter came for trial on August 13-14, 2018, before the court sitting without
17 a jury. (*See* 8/13/18 Min. Entry (Dkt. # 56); 8/14/18 Min. Entry (Dkt. # 57); 8/13/18 Tr.
18 Trans. (Dkt. # 58) (sealed); 8/14/18 Tr. Trans. (Dkt. # 59) (sealed).) Plaintiff George
19 Johnson was represented at trial by Neil Thomas Lindquist and John W. Merriman.
20 Defendant Donald P. Wang proceeded *pro se* at trial. The court also permitted the parties
21 to file post-trial briefing concerning damages. (*See* Johnson Br. (Dkt. # 60); Wang Br.
22 (Dkt. # 61); Wang Errata (Dkt. # 62).) The court has considered the testimony presented

1 at trial, the exhibits admitted into evidence, properly filed post-trial memoranda and
2 declarations, and the arguments of counsel and Mr. Wang. The court has weighed the
3 testimony of witnesses, the exhibits, and other evidence using the required
4 “preponderance of the evidence” standard. Being fully advised, and pursuant to Federal
5 Rule of Civil Procedure 52(a), the court makes the following findings of fact and
6 conclusions of law.¹

7 **II. FINDINGS OF FACT**

8 **A. The Parties**

9 1. Mr. Johnson resides in Seattle, Washington. (8/13/18 Tr. Trans. at 5:8-10;
10 Compl. (Dkt. # 1) ¶ 2; Answer (Dkt. # 13) ¶ 2.) He has been a commercial fisherman for
11 63 years—since he graduated high school in 1955. (8/13/18 Tr. Trans. at 6:1-2.)

12 2. Mr. Wang resides in Los Angeles, California. (Tr. Ex. 7 (“Wang Dep.”) at
13 18:6-14.) He purchased the F/V Thor on July 12, 2016, for \$25,000.00. (Pretrial Order
14 (Dkt. # 45) at 2 (Admitted Fact No. 2); Wang Dep. at 12:14-17, 12:25-13:4.)

15 3. *In rem* Defendant, F/V Thor, her engines, machinery, appurtenances, and
16 cargo (“F/V Thor”), Official Number 224713, is a 62-foot wooden halibut schooner of 70
17 gross tons. (Pretrial Order at 2 (Admitted Fact. No. 1); Tr. Ex. 1; Tr. Ex. 2.) F/V Thor
18 was built in 1925, in Tacoma, Washington. (Pretrial Order at 2 (Admitted Fact No. 1);

19 //

20
21 ¹ To the extent any of the court’s findings of fact may be deemed conclusions of law, they
22 shall also be considered conclusions of law. Similarly, to the extent any of the court’s
conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.
See In re Bubble Up Del., Inc., 684 F.2d 1259, 1262 (9th Cir. 1982).

Tr. Ex. 1; Tr. Ex. 2.)

B. Credibility Determinations

4. The court finds that, although Mr. Johnson is the plaintiff in this action, and therefore, by definition, is an interested party, his testimony is credible.

5. The court finds that Port of Seattle Police Officer Matthew Huston has no stake in the outcome of this litigation, and his testimony is credible.

6. The court finds that, although Frank David Price, Jr., has worked for Mr. Johnson in the past and attempted to enter into at least one business deal in the past with Mr. Wang, he has no stake in the outcome of this litigation, and his testimony is credible.

7. The court finds that, although Elwood Ramsey Latta has worked for both Mr. Johnson and Mr. Wang in the past, and although he had to obtain a judgment against Mr. Wang in order to receive his wages from Mr. Wang, he has no stake in the outcome of this litigation, and his testimony is credible.

8. The court finds that Tom E. Riedinger has no stake in the outcome of this litigation, and his testimony is credible.

9. The court finds that Mr. Wang's testimony lacks credibility. First, Mr. Wang provided inconsistent testimony in response to Mr. Johnson's motion for summary judgment. *See Johnson v. Wang*, No. C16-1738JLR, 2017 WL 4957799, at *5 (W.D. Wash. Oct. 31. 2017) ("The court is mindful of the inconsistencies in Mr. Wang's testimony.").

10. In addition, Mr. Wang's trial testimony conflicts with his deposition testimony in several respects. For example, in his deposition, Mr. Wang testified that Mr.

1 Johnson was on the F/V Thor for the purpose of evaluating the vessel “[f]or going
2 fishing.” (Wang Dep. at 22:8-13.) Yet, at trial Mr. Wang testified that he had not asked
3 Mr. Johnson to evaluate the F/V Thor, did not know why Mr. Johnson had performed an
4 evaluation of the F/V Thor, and had not seen him perform such an evaluation. (8/14/18
5 Tr. Trans. at 149:1-8.)

6 11. Mr. Wang also testified in his deposition that he did not know if Mr.
7 Johnson had ever worked on the F/V Thor. (Wang Dep. at 20:25-30:6.) However, at
8 trial, Mr. Wang testified that Mr. Johnson had worked on the F/V Thor, including
9 replacing tanks, replacing a wooden table, and replacing a step or steps. (8/14/18 Tr.
10 Trans. at 131:3-13.)

11 12. During his deposition, Mr. Wang testified that the F/V Thor was ready to
12 go tuna fishing and did not need anything at the time he purchased it. (Wang Dep. at
13 23:18-24:8, 26:9-11, 36:6-7.) However, Mr. Wang testified at trial that part of his
14 discussions with Mr. Johnson included Mr. Johnson “getting the boat ready to go
15 fishing.” (8/14/18 Tr. Trans. at 129:15-22.) Mr. Wang also testified at trial that the F/V
16 Thor needed safety gear including a life raft and survival suits, which he supplied. (*Id.* at
17 135:2-4, 138:6-8, 140:22-141:7.)

18 13. During his deposition, Mr. Wang testified that he could not recall if he had
19 asked Mr. Johnson to find a crew for the F/V Thor. (Wang Dep. at 29:11-14.) However,
20 at trial Mr. Wang testified that he discussed leasing the F/V Thor to Mr. Johnson
21 provided that Mr. Johnson supply a crew for the vessel. (8/14/18 Tr. Trans. at 129:20-22,
22

1 130:22-24; *see id.* at 133:21-24.)

2 14. Finally, Mr. Wang's cross examination during trial ended with the
3 following exchange:

4 **Q:** Mr. Wang, were you telling the truth then, or are you telling the truth
now?

5 **A:** "Then" meaning exactly when?

6 **Q:** During your deposition, Mr. Wang.

7 **A:** Hard to say.

8 (*Id.* at 149:16-20.) In this one respect, the court finds Mr. Wang's testimony to be
9 credible—it is hard to say when Mr. Wang was telling the truth. The remainder of his
10 testimony, however, is not credible. Thus, to the extent that Mr. Wang's testimony
11 conflicts with the testimony of other witnesses, the court credits the testimony of the
other witnesses, rather than Mr. Wang's testimony.

12 **C. Mr. Johnson's and Mr. Wang's Initial Oral Agreement Concerning the F/V
13 Thor**

14 15. In mid-June of 2016, Mr. Wang informed Mr. Johnson that he was
15 interested in buying the F/V Thor to go albacore tuna fishing. (8/13/18 Tr. Trans. at
16 9:15-23.) Mr. Wang asked Mr. Johnson to evaluate the boat for him. (*Id.* at 9:23.) Mr.
17 Wang told Mr. Johnson that, if he decided to purchase the F/V Thor, he would hire Mr.
18 Johnson to get the boat ready for fishing, and then once the boat was ready, Mr. Johnson
19 could serve as the captain of the vessel for the 2016 tuna fishing season. (*Id.* at 9:24-
20 10:1, 11:2-6, 12:21-23.)

21 16. Mr. Johnson and Mr. Wang agreed that Mr. Johnson would work for
22 \$15.00/hour to get the boat ready for tuna fishing and that he would keep a log of his

1 time. (*Id.* at 11:9-18.) Mr. Wang agreed to pay Mr. Johnson for his time getting the boat
2 ready for the tuna fishing season when the work was complete and the boat was ready to
3 go fishing. (*Id.* at 35:5-6, 54:22-55:2, 67:3-8.)

4 17. Mr. Johnson and Mr. Wang agreed that 60% of the proceeds from the 2016
5 fishing season would go to the boat or Mr. Wang—as the owner—and 40% of the
6 proceeds would go to the captain and crew. (*Id.* at 55:13-17; 56:11-14; 8/14/18 Tr.
7 Trans. at 138:18-139:1.) Mr. Johnson, as the captain, would retain a 20% share, and the
8 two crew members would each receive a 10% share. (8/13/18 Tr. Trans. at 56:17-19.)

9 18. Mr. Johnson agreed to work for only \$15.00/hour preparing the F/V Thor
10 for the 2016 fishing season because Mr. Wang promised to hire him as the skipper of the
11 vessel once the work was complete. (*Id.* at 11:21-22, 54:17-21, 61:2-5.) The fair market
12 value for the labor Mr. Johnson performed getting the F/V Thor ready for the fishing
13 season is \$45.00/hour. (*Id.* at 12:18-20.)

14 19. Mr. Wang and Mr. Johnson did not reduce their agreement to writing; they
15 did not have a written contract. (*Id.* at 12:24-31:1, 41:9-12.)

16 20. Mr. Wang testified at trial that he and Mr. Johnson did not reduce their
17 agreement to writing because they never agreed on how the fuel costs for the fishing
18 season should be allocated. (8/14/18 Tr. Trans. at 129:23-30:2; *see also id.* at
19 129:23-130:2, 133:8-20; 134:12-13.) However, Mr. Johnson testified that there was no
20 dispute or “discrepancy” between the parties and they agreed that the expenses for the

21 //

22 //

1 fishing season, including fuel costs, would come out of Mr. Wang's 60% of the catch.²

2 As stated above, to the extent that Mr. Wang's testimony contradicts Mr. Johnson's
3 testimony on this point, the court credits Mr. Johnson's testimony and finds that the
4 parties had agreed that expenses for the fishing season, including fuel costs, were to come
5 out of the Mr. Wang's 60% of the gross proceeds from the season's catch.

6 **D. Mr. Johnson's Work Aboard the F/V Thor**

7 21. Mr. Johnson inspected the F/V Thor on behalf of Mr. Wang. (8/13/18 Tr.
8 Trans. at 14:25-15:17.) Mr. Johnson reported to Mr. Wang that it was going to cost
9 approximately \$20,000.00 to get the F/V Thor ready to go out tuna fishing and to be
10 brought up to United States Coast Guard requirements. (*Id.* at 15:19-25.)

11 22. Mr. Wang asked Mr. Johnson to use the information Mr. Johnson obtained
12 as a result of his inspection of the F/V Thor to assist Mr. Wang in his negotiations to
13 purchase the F/V Thor. (*Id.* at 16:3-10.) Mr. Johnson was able to negotiate on behalf of
14 Mr. Wang a \$10,000.00 reduction in the F/V Thor's purchase price—from \$35,000.00 to
15 \$25,000.00. (*Id.*)

17 ² Specifically, Mr. Johnson testified on cross-examination conducted by Mr. Wang:

18 **Q:** Do you recall another discrepancy between the two of us regarding fuel costs?

19 **A:** Not a discrepancy between the two of us. A 60/40 split we talked about. The
20 boat pays the expenses and the crew gets a flat percentage, and the expenses are
21 built into that, as is the captain's deal.

20 **Q:** Which part of the 60 or 40 pays for the fuel?

21 **A:** The fuel comes out of the 60 percent. The standard deal would be the skipper
22 gets 20 percent, the two experienced crew members would get 10 percent each, of
the gross sales.

(8/13/18 Tr. Trans. at 56:9-19.)

1 23. Although the sale of the F/V Thor to Mr. Wang was not complete until July
2 19, 2016, Mr. Johnson began to work on the vessel to get it ready for the tuna fishing
3 season on June 20, 2016, at Mr. Wang's direction, for Mr. Wang's benefit, and with the
4 permission of the vessel's owners at that time. (*Id.* at 17:23-18:16, 40:14-41:8, 81:6-19,
5 82:82:8-13, 82:23-83:2; Tr. Ex. 1.)

6 24. Mr. Johnson supervised two other crew members who were also working
7 on the F/V Thor during the summer of 2016: Alex Oldfin and Aaron Vantleven.
8 (8/13/18 Tr. Trans. at 18:17-19:15.) Mr. Wang and Mr. Johnson hired these two crew
9 members together by mutual agreement. (*Id.* at 19:3-9.) Mr. Wang was responsible for
10 paying the crew. (*Id.* at 22:11-14.) Mr. Vantleven lived aboard the F/V Thor while he
11 was working for the vessel's previous owner and continued to do so once he was working
12 under Mr. Johnson's supervision. (*Id.* at 19:19-20:5.)

13 25. Between June 20, 2016, and September 2, 2016, Mr. Johnson worked a
14 total of 492 hours preparing the F/V Thor for the fishing season. (8/13/18 Tr. Trans. at
15 33:17-18, 34:2-3; *see* Tr. Ex. 5.) By September 2, 2018, Mr. Johnson had completed his
16 work and the F/V Thor "was ready to go fishing," and Mr. Johnson was prepared and
17 willing to skipper the vessel for the 2016 tuna fishing season. (8/13/18 Tr. Trans. at
18 33:18-34:1.)

19 26. Mr. Johnson kept a contemporaneous log of the time he spent working on
20 the F/V Thor to get the vessel ready for the 2016 tuna fishing season. (*Id.* at 13:19-14:19,
21 81:22-25; Tr. Ex. 5.) Mr. Johnson provided a copy of the log to Mr. Wang. (8/13/18 Tr.
22 Trans. at 37:2-7.)

1 27. Mr. Johnson also prepared a partial list of the tasks that he and the two
2 other crew members performed on the F/V Thor in order to prepare the vessel for the
3 2016 fishing season. (*Id.* at 20:18-21:17.) Mr. Johnson’s partial list of tasks was
4 compiled after all the work was completed. (*Id.* at 42:24-43:2.) The work Mr. Johnson
5 performed on the vessel included replacing tanks, replacing a wooden table, and
6 replacing some steps. (8/14/18 Tr. Trans. at 131:11-13.)

7 28. Mr. Wang paid for the equipment and materials that Mr. Johnson needed on
8 board the F/V Thor. (8/13/18 Tr. Trans. at 23:16-22.) Mr. Wang was aboard the F/V
9 Thor several times while Mr. Johnson was working there. (*Id.* at 23:11-25:6.) Mr. Wang
10 helped as a deckhand once when Mr. Johnson needed to move the F/V Thor to the pump
11 out float at the marina. (*Id.* at 23:11-15.) Mr. Wang was present when Mr. Johnson
12 installed equipment, such as the tuna pullers, and Mr. Wang inspected the equipment that
13 Mr. Johnson installed. (*Id.* at 24:10-17.) Mr. Wang was in the engine room more than
14 ten times while Mr. Johnson was working on the F/V Thor. (*Id.* 24:18-25:7.) Mr. Wang
15 also authorized Mr. Johnson to remove equipment from Mr. Wang’s other boat—the F/V
16 Alma—and install it on the F/V Thor. (*Id.* at 25:8-21.) Mr. Johnson obtained tuna
17 pullers, fishing gear, tools, and other odds and ends from the F/V Alma to place on the
18 F/V Thor with Mr. Wang’s consent. (*Id.*)

19 **E. The Events of July 23-24, 2016**

20 29. On July 23, 2016, Mr. Johnson called Mr. Wang because one of the crew
21 members was “very upset” because Mr. Wang had not paid the crew member for his
22 work on the F/V Thor. (*Id.* at 50:8-20.) Mr. Johnson was concerned about Mr. Wang’s

1 safety because the crew member indicated that he was going to confront Mr. Wang about
2 the issue. (*Id.*) Mr. Wang and the crew member subsequently argued over the wage
3 issue, and Mr. Wang called the Seattle Police Department (“SPD”). (*Id.*)

4 30. Mr. Wang reported to SPD that Mr. Vantleven was harassing his
5 coworkers. (*Id.* at 71:21-22; Tr. Ex. 8.) When Officer Matthew Huston arrived at the
6 F/V Thor on July 23, 2018, Mr. Wang was at the vessel, but Mr. Vanleven was not there.
7 (8/13/18 Tr. Trans. at 73:7-23.) Officer Huston telephoned Mr. Vantleven and told him
8 that he needed to retrieve his belongings from the F/V Thor and, if he continued to go
9 onto the vessel after retrieving his belongings, he would be cited for criminal trespass.
10 (*Id.* at 72:22-25; Tr. Ex. 8.)

11 31. On the morning of July 24, 2016, Mr. Johnson was on the F/V Thor when
12 SPD officers arrived once again. (8/13/18 Tr. Trans. at 25:22-26:15; Tr. Ex. 8.) The
13 SPD officers were at the vessel at the request of Mr. Wang to perform a “civil standby” to
14 ensure the peace while both Mr. Vantleven and Mr. Oldfin retrieved their possessions
15 from the boat. (8/13/18 Tr. Trans. at 25:22-26:15, 73:3-10.)

16 32. Mr. Johnson asked Mr. Wang why he was kicking the crew off the vessel.
17 (*Id.* at 26:7-15.) Mr. Wang told Mr. Johnson that the crew members had asked him for
18 money, but he was not satisfied with their work and so he had fired them. (*Id.*) This was
19 the first time that Mr. Johnson had heard that Mr. Wang was dissatisfied with the crew’s
20 work. (*Id.*)

21 33. Mr. Johnson asked Mr. Wang if he wanted Mr. Johnson to vacate the F/V
22 Thor as well. (*Id.* at 26:16-21.) Mr. Wang said that he did not want Mr. Johnson to leave

1 because—although he intended to replace the two fired crew members with Mexicans
2 who he would bring to Seattle from the Los Angeles area—he needed a United States
3 captain to run the boat. (*Id.*)

4 34. Mr. Johnson interviewed prospective crew members who lived in the
5 Seattle area to replace Mr. Vantleven and Mr. Oldfin, but none were willing to work for
6 the substandard wages that Mr. Wang was then offering. (*Id.* at 28:13-21.)

7 **F. The End of Mr. Johnson’s Employment with Mr. Wang**

8 35. The last day that Mr. Johnson worked aboard the F/V Thor was on
9 September 2, 2016. (*Id.* at 33:17-18.)

10 36. By the time Mr. Johnson stopped working for Mr. Wang, the F/V Thor was
11 properly outfitted and prepared to go tuna fishing. (*Id.* at 33:19-23.) The F/V Thor
12 needed fuel, groceries, and a crew, but it needed no more repairs. (*Id.*) The vessel was
13 ready to go fishing. (*Id.*)

14 37. When Mr. Johnson told Mr. Wang that the F/V Thor was ready to go tuna
15 fishing, Mr. Wang informed Mr. Johnson that he intended to sell the F/V Thor instead of
16 sending it to fish tuna that season. (*Id.* at 34:7-17.) Further, Mr. Wang told Mr. Johnson
17 to get off the vessel and to remove all his belongings. (*Id.* at 34:18-20, 61:6-10.)

18 38. When Mr. Wang informed Mr. Johnson that he intended to sell the F/V
19 Thor, Mr. Johnson asked to be paid for his work aboard the vessel, but Mr. Wang
20 refused. (*Id.* at 34:20-23, 66:1-7.) Mr. Wang has never paid Mr. Johnson for any of Mr.
21 Johnson’s work on the F/V Thor. (*Id.* at 35:2-11.) Indeed, Mr. Wang told Mr. Johnson

22 //

1 that he was “dead wood, an old man,” and that Mr. Johnson would be “dead before [Mr.
2 Wang] paid him a dime.” (*Id.* at 25:7-11.)

3 39. Mr. Wang’s refusal to pay Mr. Johnson the hourly wages he owed to Mr.
4 Johnson for Mr. Johnson’s work aboard the F/V Thor was intentionally dishonest,
5 recalcitrant, and done in bad faith.

6 **III. CONCLUSIONS OF LAW**

7 **A. Jurisdiction**

8 1. The court has subject matter jurisdiction over this action pursuant to 28
9 U.S.C. § 1333 because this dispute concerns repair work performed on a commercial
10 fishing vessel to make the vessel ready for the upcoming tuna fishing season. *See*
11 *Owens-Illinois, Inc. v. U.S. Dist. Court for W. Dist. of Wash., at Tacoma*, 698 F.2d 967,
12 970 (9th Cir. 1983) (“Where a contract relates to the repair or navigation of a vessel, a
13 dispute arising from the contract lies within admiralty jurisdiction.”).

14 **B. The Oral Contract**

15 2. “When a contract is a maritime contract and the dispute is not inherently
16 local, federal law controls basic contract interpretation.” *Crowley Marine Serv., Inc. v.*
17 *Vigor Marine LLC*, 17 F. Supp. 3d 1091, 1094 (W.D. Wash. 2014) (citing *N. Pac. S.S.*
18 *Co. v. Hall Bros. Marine R. & Shipbuilding Co.*, 249 U.S. 119, 128 (1919)); *see also*
19 *Royal Ins. Co. of Am. v. Pier 39 Ltd. P’ship*, 738 F.2d 1035, 1036 (9th Cir. 1984) (citing
20 *Ins. Co. v. Dunham*, 78 U.S. 1, 26 (1871)) (“A contract falls within the court’s admiralty
21 jurisdiction “if [the contract]” subject matter is maritime.”). “Basic principles in the
22 common law of contracts readily apply in the maritime context.” *Clevo Co. v. Hecny*

1 *Transp., Inc.*, 715 F.3d 1189, 1194 (9th Cir. 2013).

2 3. During mid-June 2016, Mr. Johnson and Mr. Wang formed an oral
3 contract, which contained the following terms: Mr. Johnson agreed to work on the F/V
4 Thor for \$15.00/hour to prepare the vessel for the upcoming tuna fishing season. Mr.
5 Johnson and Mr. Wang agreed that Mr. Wang would pay Mr. Johnson for his time getting
6 the F/V Thor ready for the season when the vessel was ready to go fishing. Mr. Johnson
7 also agreed to serve as captain of the F/V Thor during the tuna fishing season. In
8 exchange for his services as captain, Mr. Wang promised Mr. Johnson a 40% share of the
9 gross sales of any catch. Mr. Johnson was to pay two crew members shares of 10% each
10 out of his 40% share, and Mr. Johnson would retain a 20% share of the gross sales of any
11 catch. Mr. Wang, as the owner of the F/V Thor, was to receive 60% of the gross sales of
12 any catch. The expenses for the vessel, including fuel for the 2016 fishing season, were
13 to come out of Mr. Wang's 60% share.

14 4. Mr. Wang breached his oral contract with Mr. Johnson when he refused to
15 pay Mr. Johnson for the 492 hours of work that Mr. Johnson performed on the F/V Thor
16 getting the vessel ready for the 2016 tuna fishing season. Mr. Wang also breached his
17 oral contract with Mr. Johnson when he refused to allow Mr. Johnson to take the F/V
18 Thor tuna fishing during the 2016 season and instead decided to put the vessel up for
19 sale.

20 **C. Application of Admiralty Statutes**

21 5. “[L]egislation for the benefit of seamen is to be construed liberally in their

22 //

1 favor.” *McMahon v. United States*, 342 U.S. 25, 27 (1951).

2 6. Section 10601 of Title 46 requires contracts between working fishermen
3 and those who own the vessel to be in writing. *See* 46 U.S.C. § 10601; *see also* *Gruver v.*
4 *Lesman Fisheries, Inc.*, 409 F. Supp. 2d 1263, 1265 (W.D. Wash. 2005) (“Section
5 10601(a) requires that agreements with seamen be in writing; a master who hires a
6 seaman on an oral contract violates that law . . .”).

7 7. Section 10601 “specifically includes lay share fisherman by providing that
8 ‘[t]he agreement shall . . . include the terms of *any wage, share, or other compensation*
9 *arrangement* particular to the fishery in which the vessel will be engaged.’” *Doyle v.*
10 *Huntress, Inc.*, 419 F.3d 3, 14 (1st Cir. 2005) (quoting 46 U.S.C. § 10601(c)(2), which is
11 now redesignated as 46 U.S.C. § 10601(b)(3)) (italics in original). Section 10601 also
12 provides that the written agreement shall “state the period of effectiveness of the
13 agreement” and “include other agreed terms.” 46 U.S.C. §§ 10601(b)(1), (b)(3). Thus,
14 the contract between Mr. Wang and Mr. Johnson fell within the purview of 46 U.S.C.
15 § 10601 and was required to be in writing.

16 8. Mr. Wang’s failure to reduce his oral agreement with Mr. Johnson to
17 writing was a violation of 46 U.S.C. § 10601, and the oral contract was, therefore,
18 contrary to law. *See Doyle v. Huntress, Inc.*, 301 F. Supp. 2d 135, 144 (D.R.I. 2004),
19 *aff’d*, 419 F.3d 3 (1st Cir. 2005) (“By definition, oral agreements do not satisfy the
20 statute, as § 10601 requires Defendants to have written agreements with their crew

21 //

22 //

1 members.”).

2 9. Section 11107 of Title 46 provides, in pertinent part:

3 An engagement of a seaman contrary to a law of the United States is void.
4 A seaman so engaged . . . is entitled to recover the highest rate of wages at
5 the port from which the seaman was engaged or the amount agreed to be
6 given the seaman at the time of engagement, whichever is higher.

7 46 U.S.C. § 11107. “The most natural reading of the term ‘seaman’ in § 11107 is that
8 ‘seaman’ encompasses lay share fishermen.” *Doyle*, 419 F.3d at 14.

9 10. Reading 46 U.S.C. § 11107 together with 46 U.S.C. § 10601, the “highest
10 rate of wages” provision of § 11107 provides a cause of action available to lay share
11 fishermen against vessel owners when their contracts are contrary to law—such as the
12 oral employment contract between Mr. Wang and Mr. Johnson. *See Flores v. Am.*
13 *Seafoods Co.*, 335 F.3d 904, 912 (9th Cir. 2003) (stating that an agreement that violates
14 the requirements of § 10601 “will trigger the application of 46 U.S.C. § 11107”); *Seattle-*
15 *First Nat’l Bank v. Conaway*, 98 F.3d 1195, 1198 (9th Cir. 1996) (“[Section] 11107
16 provides for a penalty against vessel owners who employ seamen without written
17 agreements in violation of §10601.”); *Gruver*, 409 F. Supp. 2d at 1265 (“[A] master who
18 hires a seaman on an oral contract violates [46 U.S.C. § 10601], and the seaman is
19 therefore entitled to the remedies set forth in § 11107.”).

20 11. The Ninth Circuit has interpreted the term “highest rate of wages” as
21 “entitl[ing] the wronged seaman to recover either his promised wages or the highest rate
22 of wages of a seaman of comparable rating at the port from which he was engaged,
whichever is higher.” *TCW Special Credits v. Chloe Z Fishing Co.*, 129 F.3d 1330, 1334

1 (9th Cir. 1997). In other words, the provision provides “a statutory default to [the]
2 prevailing market wage in the case of an invalid contract.” *Harper v. U.S. Safoods LP*,
3 278 F.3d 971, 977 (9th Cir. 2002).

4 12. Because the oral contract between Mr. Wang and Mr. Johnson was contrary
5 to law, Mr. Johnson is entitled to either his promised wages or the prevailing market
6 wage, whichever is higher, for his work aboard the F/V Thor. *See* 46 U.S.C. §§ 10601,
7 11107; *TCW Special Credits*, 129 F.3d at 1334; *see also Harper*, 278 F.3d at 977.
8 Although Mr. Wang promised Mr. Johnson a rate of \$15.00/hour for his work on the F/V
9 Thor (8/13/18 Tr. Trans. at 11:9-18), the fair market value for the labor Mr. Johnson
10 performed is \$45.00/hour (*id.* at 12:18-20). Pursuant to 46 U.S.C. § 11107, Mr. Johnson
11 is entitled to \$45.00/hour for the 492 hours of work on the F/V Thor for which Mr. Wang
12 failed to compensate him. The total amount of wages that Mr. Johnson is entitled to
13 recover from Mr. Wang, therefore, is \$22,140.00.³

14 //

15 //

16 //

17 //

18 ³ Mr. Johnson makes no claim for damages arising out of Mr. Wang’s breach of the
19 portion of their oral contract related to Mr. Johnson’s agreement to serve as captain of the F/V
20 Thor for the 2016 tuna fishing season in exchange for a share of the catch. (*See generally*
21 Compl. (Dkt. # 1).) In any event, any calculation of damages based on Mr. Johnson’s loss of a
22 share of the catch would be too speculative to award. *See Putnam v. Lower*, 236 F.2d 561, 571
(9th Cir. 1956) (“[P]rospective profits from a fishing lay are too speculative and uncertain to be a
proper measure of damages,” except “where there is an established going business” or some
other “yardstick of prior profits.”); (*see also Johnson Tr. Br.* (Dkt. # 52) at 9 (“[D]amages from
[Mr.] Johnson’s lost opportunity to fish tuna in 2016 are too speculative in nature to
enforce . . .”).)

1 **D. Wage Penalty under RCW 49.52.070**

2 13. Mr. Johnson seeks an award of penalties pursuant to Washington State's
3 wage laws.⁴ (*See* Johnson Br. at 2-4.) Washington law provides that an employer who
4 willfully and intentionally deprives his employee of the employee's rightful wages in
5 violation of RCW 49.52.050⁵ shall be liable for twice the withheld amount. *See* RCW
6 49.52.070.

7 14. Before applying RCW 49.52.070, the court must determine if federal law
8 preempts RCW 49.52.070. Federal law preempts state law if (1) Congress expressly so
9 states, (2) Congress enacts comprehensive laws that leave no room for additional state
10 regulation, or (3) state law actually conflicts with federal law. *Pac. Merch. Shipping*
11 *Ass'n v. Aubry*, 918 F.2d 1409, 1415 (9th Cir. 1990). As a general rule, states may
12 supplement federal admiralty law as applied to matters of local concern, so long as state
13 law does not actually conflict with federal law or interfere with the uniform working of
14 the maritime legal system. *Id.* at 1422.

15 //

16 //

17 ⁴ Mr. Johnson seeks punitive damages only in the alternative to the penalty available
18 under Washington's wage laws. (*See* Johnson Br. at 4-5.) Because the court awards Mr.
19 Johnson a recovery under RCW 49.52.070, it does not consider Mr. Johnson's claim for punitive
damages.

19 ⁵ In pertinent part, RCW 49.52.050 provides:

20 Any employer . . . who . . . [w]illfully and with intent to deprive the employee of
21 any part of his or her wages, shall pay any employee a lower wage than the wage
such an employer is obligated to pay such employee by any statute, ordinance, or
contract . . . [s]hall be guilty of a misdemeanor.

22 RCW 49.52.050(2).

1 15. “[Section 11107 of Title 46] does not expressly preempt state law.”

2 *Gruver*, 409 F. Supp. 2d at 1265 (citing 46 U.S.C. § 11107).

3 16. RCW 49.52.070 does not conflict with 47 U.S.C § 11107, but “merely
4 provides an additional remedy for wages that have been wrongfully withheld.” *Gruver*,
5 409 F. Supp. 2d at 1265. Further, RCW 49.52.070 merely supplements and “does not
6 interfere with the uniform working of the maritime legal system.” *Id.*; *Chirrick v. F/V*
7 *SHARON LORRAINE*, No. C95-936D, 1996 WL 263242, at *2 (W.D. Wash. Jan. 24,
8 1996) (citing *Greene v. Pac. King Fisheries, Inc.*, No. C92-1985Z, 1993 WL 565333, at
9 *4 (W.D. Wash. Jan. 14, 1993)).

10 17. Courts have described both 46 U.S.C. § 11107 and RCW 49.52.070 as
11 penalties. *See, e.g., Seattle-First Nat’l Bank v. Conaway*, 98 F.3d 1195, 1198 (9th Cir.
12 1996) (“[Section] 11107 provides for a penalty against vessel owners who employ
13 seamen without written agreements in violation of § 10601.”); *Morgan v. Kingen*, 210
14 P.3d 995, 996 (Wash. 2009), as corrected (Nov. 9, 2009) (“RCW 49.52.070 . . . set[s] out
15 the criminal and civil penalty mandated where any employer . . . willfully and with intent
16 deprives the employee of any part of his or her wages.”). Yet, Section 11107 is “better
17 characterized as merely providing a statutory default to prevailing market wage in the
18 case of an invalid contract.” *Harper v. U.S. Seafoods LP*, 278 F.3d 971, 977 (9th Cir.
19 2002). Rather than being punitive, the remedy provided by 46 U.S.C. § 11107 “merely
20 gives what is due.” *Seattle-First Nat. Bank v. LADY LYNNE*, Off. No. 95887, No.
21 A92-0633 CIV (HRH), 1995 WL 464536, at *5 n.10 (D. Alaska Apr. 17, 1995), *aff’d sub*
22 *nom. Seattle-First Nat. Bank v. Conaway*, 98 F.3d 1195 (9th Cir. 1996) (viewing 46

1 U.S.C. § 11107 as “remedial” rather than “punitive”). Thus, 46 U.S.C. § 11107 leaves
2 room for the court to award the wage that “is due,” as well as a penalty under RCW
3 49.52.070, if warranted. *See Pac. Merch. Shipping Ass’n*, 918 F.2d at 1415 (stating that
4 federal law preempts state law if federal law leaves no room for additional state
5 regulation).

6 18. Moreover, both Washington State and the federal government have an
7 interest in seeing that employees are paid wages that are due. *Gruver*, 409 F. Supp. 2d at
8 1265; *Chirrick*, 1996 WL 263242, at *2 (citing *Greene*, 1993 WL 565333, at *3).

9 19. Further, Washington has a local interest in ensuring that employers who do
10 business in Washington comply with state wage laws in paying their Washington
11 employees. *See Gruver*, 409 F. Supp. 2d at 1265; *Chirrick*, 1996 WL 263242, at *2;
12 *Greene*, 1993 WL 565333, at * 3 (stating that “Washington has an interest in ensuring
13 that corporations that do business in the state comply with state wage laws” and that the
14 state’s interest would be even greater if the seamen involved were Washington residents).

15 20. Accordingly, the court concludes that the doubling of wages under RCW
16 49.52.070 is not preempted by federal maritime law in the context of this case. *See*
17 *Gruver*, 409 F. Supp. 2d at 1265-66; *Chirick*, 1996 WL 263242, at *2 (citing *Greene*,
18 1993 WL 565333, at *2-4).

19 21. Mr. Wang willfully and intentionally deprived his employee, Mr. Johnson,
20 of his rightful wages in violation of RCW 49.52.050. *See supra* § II.F. Accordingly, Mr.
21 Wang is liable to Mr. Johnson for twice the withheld amount. *See* RCW 49.52.070.

22 //

1 22. Mr. Wang willfully and intentionally withheld \$22,140.00 in wages from
2 Mr. Johnson. *See supra* § III.C. Accordingly, under RCW 49.52.070, Mr. Johnson is
3 entitled to recover a total of \$44,280.00 in wages and penalties from Mr. Wang.

4 **E. Attorney’s Fees**

5 23. Mr. Johnson asserts that he is entitled to recover his attorney’s fees. (*See*
6 Johnson Br. at 4.) “The equitable grant of attorney’s fees is appropriate in admiralty only
7 when the shipowner acted arbitrarily, recalcitrantly, or unreasonably.” *Madeja v.*
8 *Olympic Packers, LLC.*, 310 F.3d 628, 635 (9th Cir. 2002); *see Flores v. Am. Seafoods*
9 *Co.*, 335 F.3d 904, 919 (9th Cir. 2003) (“Under federal maritime law, no attorneys’ fees
10 may be awarded in this case, where the district court explicitly held that ASC had acted
11 in good faith.”). The district court has discretion to award “punitive attorney fees” when
12 a shipowner is “intentionally dishonest or recalcitrant either in refusing to pay [a
13 seaman’s] wage claims or in defending against these claims.” *Madeja*, 310 F.3d at 636.

14 24. After agreeing to pay Mr. Johnson \$15.00/hour to prepare the F/V Thor for
15 the 2016 fishing season (8/13/18 Tr. Trans. at 11:9-18), Mr. Wang then denied that he
16 had ever hired Mr. Johnson to work on the F/V Thor (Wang Dep. at 21:24-7). Mr. Wang
17 also told Mr. Johnson that he was “dead wood, an old man,” and that Mr. Johnson would
18 be “dead before [Mr. Wang] paid him a dime.” (*Id.* at 25:7-11.) Based on this conduct,
19 the court concludes that Mr. Wang was intentionally dishonest, recalcitrant, and acted in
20 bad faith when he refused to pay Mr. Johnson his wages for preparing the F/V Thor for
21 the 2016 tuna fishing season. On this basis, Mr. Johnson is entitled to recover his

22 //

1 attorney's fees in prosecuting his complaint against Mr. Wang. *See Madeja*, 310 F.3d at
2 636.

3 25. In its order denying Mr. Johnson's motion for summary judgment, the court
4 noted various inconsistencies in Mr. Wang's pretrial testimony. *Johnson*, 2017 WL
5 4957709, at *5 ("The court is mindful of the inconsistencies in Mr. Wang's testimony.").
6 In this order, the court also describes the various inconsistencies in Mr. Wang's trial
7 testimony and finds his trial testimony to be not credible. *See supra* § II.B.9. Indeed, the
8 court warned Mr. Wang during the course of his trial testimony about the inconsistencies
9 in his testimony. (8/14/18 Tr. Trans. at 165:22-166:6.) Based on this conduct, the court
10 concludes that Mr. Wang was intentionally dishonest in defending against Mr. Johnson's
11 claims. Mr. Wang's bad faith litigation conduct is an independent basis on which Mr.
12 Johnson is entitled to recover his attorney's fees in prosecuting his complaint. *See*
13 *Madeja*, 310 F.3d at 636.

14 26. The court orders Mr. Johnson's counsel to file a motion, along with
15 appropriate evidentiary materials, within 14 days of the date of this order so that the court
16 may determine the appropriate amount of Mr. Johnson's reasonable attorney's fees. The
17 court further orders Mr. Johnson's counsel to note the motion in accordance with Local
18 Rule LCR 7(d) so that Mr. Wang has the opportunity to file a timely response. *See* Local
19 Rules W.D. Wash. LCR 7(d). The court will enter judgment following its determination
20 of the amount of Mr. Johnson's reasonable attorney's fees.

21 //

22 //

1 **F. Prejudgment Interest**

2 27. Mr. Johnson asks for an award of prejudgment interest. (Compl. at 2;
3 Johnson Br. at 5.) The award of prejudgment interest in maritime cases “is the rule,
4 rather than the exception.” *Corpus Christi Oil & Gas Co. v. Zapata Gulf Marine Corp.*,
5 71 F.3d 198, 204 (5th Cir. 1995). Indeed, the trial court has discretion to deny
6 prejudgment interest “only where peculiar circumstances would make such an award
7 inequitable.” *Id.* The court finds no such peculiar circumstances exist in this case.

8 28. When determining the appropriate amount of pre-judgment interest to
9 apply, admiralty courts “may look to state law and other reasonable guideposts.” *Todd*
10 *Shipyards Corp. v. Auto Transp., S.A.*, 763 F.2d 745, 753 (5th Cir. 1985). Under
11 Washington law, “it is a proper exercise of discretion for a trial court to calculate
12 prejudgment interest in a civil dispute at the statutory judgment interest rate reflected in
13 RCW 4.56.110.” *Pub. Util. Dist. No. 2 of Pac. Cty. v. Comcast of Wash. IV, Inc.*, 184
14 Wash. App. 24, 81, 336 P.3d 65, 94 (Wash. Ct. App. 2014), *as amended on*
15 *reconsideration* (Feb. 10, 2015). “Twelve percent is within the permissible range of
16 interest rates pursuant to RCW 4.56.110(4).” *Id.* (citing RCW 19.52.020).

17 29. The court awards prejudgment interest only on \$22,140.00—the portion of
18 the judgment that constitutes Mr. Johnson’s unpaid wages—and not the doubled portion
19 of Mr. Johnson’s award. *See Paul v. All Alaskan Seafoods, Inc.*, 24 P.3d 447, 459 (Wash.
20 Ct. App. 2001) (“Prejudgment interest was awarded on damages arising under the
21 fishermen's maritime claim, not on the double wage award under state law.”).

22 //

30. The court concludes that pre-judgment interest at the rate of 12.00% per year is appropriate. In this case, prejudgment interest accrues at a rate of \$7.28/day ($22,140 \times .12 \div 365$). The pre-judgment interest rate shall apply from September 2, 2016, which is the last day that Mr. Johnson worked for Mr. Wang and the day on which Mr. Wang agreed to pay Mr. Johnson his wages, until the current date, for a total of 740 days. Accordingly, the court concludes that Mr. Johnson is entitled to an award of prejudgment interest in the amount of \$5,387.20.

IV. CONCLUSION

On the basis of the foregoing findings of fact and conclusions of law, the court concludes that Mr. Johnson is entitled to recover from Mr. Wang, *in personam*, and the F/V Thor, *in rem*, jointly and severally:

1. Wages in the amount of \$22,140.00 pursuant to 46 U.S.C. §§ 10601 and 11107. *See supra* § III.C. In addition, under RCW 49.52.070, Mr. Johnson is entitled to double this amount for a total of \$44,280.00 in wages and penalties. *See supra* § III.D.

2. Reasonable attorney's fees in an amount to be determined by the court after Mr. Johnson's attorney files an appropriate motion as described herein. *See supra* § III.E.

3. Prejudgment interest on his \$22,140.00 of unpaid wages in the amount of \$5,387.20. *See supra* § III.F.

//

//

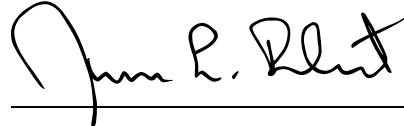
//

//

1 The court will reserve its entry of judgment until after it determines the amount of
2 Mr. Johnson's reasonable attorney's fees.

3 **IT IS SO ORDERED.**

4 Dated this 12th day of September, 2018.

5
6 

7 JAMES L. ROBART
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22